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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/944,668      | 08/31/2001  | Mehran Bashiri       | S63.2-9867          | 3795             |

490 7590 05/04/2006

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

BAXTER, JESSICA R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3733

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|  |                               |                                |  |
|--|-------------------------------|--------------------------------|--|
| <p align="center"><b>Office Action Summary</b></p> | Application No.<br>09/944,668 | Applicant(s)<br>BASHIRI ET AL. |  |
|  | Examiner<br>Jessica R. Baxter | Art Unit<br>3733               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 5, 16-29, 31, 32 and 43 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41, 42, 44 and 45 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-15, 30 and 33-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 6-10, 14, 15, 30, 33, 34 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by PG-PUB 2002/0107560 to Richter.

Richter discloses a stent (1) having a longitudinal axis comprising: a non-woven tubular element comprising a plurality of interconnected struts (FIG. 3, FIG. 4) which form at least one continuous pathway which extends all the way around the longitudinal axis, the interconnected struts having an outside surface facing outside the stent, an inner surface facing the longitudinal axis, and a side portion there between, the side portion having a thickness defined by the radial distance between the outer surface and the inner surface; the stent further comprising at least one of the struts being a frangible temporary strut (4), the frangible temporary strut restraining at least two of the interconnected struts from self-expansion, at least two a portion of the stent constructed and arranged to self-expand upon breaking of the at least one frangible temporary strut (paragraph 0009), the thickness of a portion of the frangible temporary strut being substantially narrower than the thickness of any other portion of the frangible temporary strut (paragraphs 0020, 0026).

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Richter discloses that the frangible temporary strut is constructed from a different material than the interconnected struts (paragraphs 0021,0022,0026).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11-13, 35-37, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter '560 in view of U.S. Patent No. 5,591,223 to Lock et al.

Richter discloses the claimed invention except for the specific pressures at which the temporary strut breaks. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device with the claimed pressure ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, In re Aller, 105 USPQ 233.

***Allowable Subject Matter***

5. Claims 41, 42, 44 and 45 are allowed.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-4,6-15, 30, 33-42, 44 and 45 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
jrb

Jessica R Baxter  
Examiner  
Art Unit 3733

  
**EDUARDO C. ROBERT**  
**SUPERVISORY PATENT EXAMINER**